

September 13, 2006

EA No. 06-194

Mr. Calvin Overdorff
President/Radiation Safety Officer
Quaker Sales Corporation
P. O. Box 880
Johnstown, PA 15906

SUBJECT: NOTICE OF VIOLATION (NRC Inspection Report No. 03032130/2006001)

Dear Mr. Overdorff:

This letter refers to the NRC safety inspection conducted at your facility in Johnstown, Pennsylvania, and at the temporary job site near Clyde, Indiana County, Pennsylvania, on July 11, and 13, 2006. The inspection was limited to a review of the circumstances associated with the damage to an unattended portable nuclear gauge on June 20, 2006. The gauge, which contained NRC licensed radioactive material, was damaged when it was run over by a bulldozer after an authorized gauge operator had left it unattended for approximately five minutes at the job site. You reported this event to the NRC by telephone on June 20, 2006, and you followed up that verbal report with the required 30-day written report dated July 12, 2006, wherein you described corrective actions taken to prevent recurrence.

As described in the NRC inspection report sent to you on August 22, 2006, an apparent violation of NRC requirements was identified during the NRC inspection, and involved the failure by the authorized gauge operator to control and maintain constant surveillance of the gauge. Our letter also informed you that the NRC was considering escalated enforcement action in accordance with its enforcement policy, and you were provided an opportunity to address our concerns at a predecisional enforcement conference, or to provide a written response, prior to the NRC determining appropriate enforcement action. In a telephone conversation with John Kinneman of my staff on August 16, 2006, you declined the opportunity to attend a conference and stated that you had no additional information to provide to the NRC.

Based on the inspection, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it are described in detail in the subject inspection report. In this case, the damage to the gauge did not result in removal of the source from its shielded position, nor did it cause any leakage of radioactive material from the source. Furthermore, unauthorized persons did not come into direct contact with the material during the time that it was unattended, and there is no evidence that any member of the public was exposed to unnecessary doses of radiation. Nonetheless, this violation is of concern to the NRC because (1) the failure to control radioactive material could result in the loss or theft of the material; and

(2) unintended radiation doses to members of the public could occur if the source was removed from its shielded position. Therefore, this violation is categorized at Severity Level III in accordance with the Enforcement Policy.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$3,250 is considered for a Severity Level III violation involving damage to a nuclear gauge containing NRC licensed material. Because your facility has not been the subject of escalated enforcement action within the last two years or two inspections, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. Credit for corrective actions is warranted because your corrective actions were considered prompt and comprehensive. These corrective actions were provided to the NRC in your letter dated July 12, 2006, and included, but were not limited to: (1) immediately restricting access to the immediate area around the damaged gauge in the event there was any contamination, as well as to prevent any exposure to members of the public; (2) returning the damaged gauge to the manufacturer for repairs; (3) re-instructing the authorized gauge operator regarding your security requirements for the use of gauges at temporary job sites; and, (4) discussing the event with all company authorized gauge operators, and scheduling refresher training on Operating and Emergency procedures, with particular emphasis on maintaining constant surveillance and immediate control of gauges.

Therefore, to encourage prompt and comprehensive correction of violations, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice of Violation, without a civil penalty, for this Severity Level III violation. However, you should be aware that significant violations in the future could result in a civil penalty. In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

The NRC has concluded that information regarding the reasons for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in this letter, in your letter dated July 12, 2006, and in the inspection report issued on August 22, 2006. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice. We appreciate your cooperation with us in this matter.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, if any, will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). To the extent possible, your response should not

include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/reading-rm/adams.html> (the Public Electronic Reading Room).

Sincerely,

/RA/

Samuel J. Collins
Regional Administrator

Docket No. 03032130
License No. 37-23351-02

Enclosure: Notice of Violation

cc w/encl: Commonwealth of Pennsylvania

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*per telecon w/SMerchant to JWray on 09/12/06

**concurrence on previous page

ENCLOSURE

NOTICE OF VIOLATION

Quaker Sales Corporation
Pottstown, Pennsylvania

Docket No. 030-32130
License No. 37-23351-02
EA No. 06-194

During an NRC inspection conducted on July 11, and 13, 2006, for which an exit meeting was held on July 13, 2006, one violation of NRC requirements was identified. In accordance with the Enforcement Policy, the violation is listed below:

10 CFR 20.1802 requires that the licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, *controlled area* means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee for any reason; and *unrestricted area* means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, on June 20, 2006, the licensee did not control and maintain constant surveillance of licensed material contained in a Troxler Model 3450 portable nuclear density gauge that was being used in an unrestricted area at a temporary job site near Clyde, Indiana County, Pennsylvania. Specifically, the gauge user left the gauge unattended for approximately 5 minutes while he went to talk with a state highway inspector who was approximately 150 feet away from the gauge. During the time period that the gauge was not in direct line of sight with the operator, the gauge was damaged when it was run over by a bulldozer.

This is a Severity Level III violation (Supplement VI)

The NRC has concluded that information regarding the reasons for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in your letter dated July 12, 2006, in the inspection report issued on August 22, 2006, and in the NRC letter transmitting this Notice. Therefore, no response to this Notice is required. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation, EA 06-194" and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555.

If you choose to respond, your response will be placed in the NRC Public Document Room (PDR). Therefore, to the extent possible, the response should not include any personal privacy or proprietary information so that it can be placed in the PDR without redaction. ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room).

In accordance with 10 CFR 19.11, you may be required to post this Notice within two working days.

Dated this 13th day of September 2006